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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

21 Cr. 3 (JSR)

5 STEVE ROSADO,

6 Defendant.

7 -----x

Sentencing

8 April 28, 2022
9 11:00 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: JONATHAN BODANSKY

JANE CHONG

18 Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK

20 Attorneys for Defendant

21 BY: MARISA CABRERA

22
23 Also Present:

24 S.A. Elizabeth Jensen, FBI

25 S.A. Thomas Thompson, FBI

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1 (Case called).

2 THE DEPUTY CLERK: Will the parties please identify
3 themselves for the record.

4 MR. BODANSKY: Good morning, your Honor. AUSA
5 Bodansky and Jane Chong for the government. We are joined by
6 Special Agents Tom Thompson and Elizabeth Jensen.

7 THE COURT: Good morning.

8 MS. CABRERA: Good morning, your Honor. Marisa
9 Cabrera, of Federal Defenders, on behalf of Mr. Rosato.

10 THE COURT: Good morning.

11 All right. So, we are here for sentencing.

12 The first item of business is to calculate the
13 guidelines. So the probation office in the presentence report
14 calculates it as a total offense level of 36, a criminal
15 history category of V, and a guideline range, which is not
16 binding on the Court, but which the Court must consider, of 292
17 to 365 months.

18 Any disagreement with that from the government?

19 MR. BODANSKY: No, your Honor.

20 THE COURT: Any from the defense?

21 MS. CABRERA: No, your Honor.

22 THE COURT: So the Court also agrees and will adopt
23 that calculation, and it also will adopt the presentence
24 report.

25 So there is, of course, a mandatory minimum here, but

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1 we need to talk about what the sentence should be under Section
2 3553(a) of Title 18.

3 So let me hear first from defense counsel, then from
4 government counsel, then from the defendant if he wishes to be
5 heard.

6 And why don't you go to the rostrum and then you can
7 take off your mask there.

8 MS. CABRERA: Thank you, Judge.

9 Your Honor, 15 years is a sufficiently harsh,
10 punitive, and deterrent sentence. Even with the minimum
11 sentence of 15 years, Mr. Rosato will be released at the
12 earliest when he is 57 years old. And even that might not be
13 right because, upon the conclusion of his sentence, he will be
14 evaluated for civil confinement and, from that time on, the BOP
15 will make a determination as to whether or not he is an
16 appropriate candidate for civil confinement, and then he will
17 then execute a remainder of time in BOP custody apart from the
18 incarceratory sentence.

19 Fifteen years would simply allow the BOP to make an
20 earlier evaluation if further intensive sex offender treatment
21 is necessary for Mr. Rosato, and we would ask this Court to --

22 THE COURT: Well, it does seem that he did not -- that
23 his prior training did not relieve him from committing the
24 instant offense.

25 MS. CABRERA: Well, we would disagree with that

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1 characterization, your Honor. From 20 --

2 THE COURT: Well, you are not disagreeing that he
3 committed the instant offense.

4 MS. CABRERA: Correct. However, we are arguing that
5 he was in fact rehabilitated for that time. However, with the
6 pandemic—a once in a lifetime event—he in effect relapsed. All
7 of the tools that he had learned from Gowanda sex offender
8 treatment, all of the treatment programs that he had done, and
9 all of the tools that he had employed, he had an apartment, he
10 had a social life, he had a girlfriend of an appropriate age.
11 He participated in guitar lessons and Comic Con. He went to
12 concerts, movies. He had an incredibly to robust social life.
13 And these were the tools that allowed him to ensure that he was
14 not reoffending.

15 And he recognizes and, quite frankly, the Courts
16 agree, the New York State of Board of Examiners, first, he
17 contacted appellate counsel at the Center for Appellate
18 Litigation to file a petition called modification of the sex
19 offender registry. He was originally designated a level III,
20 the highest risk of reoffense. They reviewed his history, they
21 reviewed his -- the fact that he was employed, his connections,
22 and all of the factors that I had just noted to your Honor, and
23 they determined that a reduction to a level II was appropriate,
24 that they would not oppose it. And Judge Merchan, out of the
25 New York State Supreme Court, agreed and reduced his level to a

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1 level II.

2 While there is no disputing that he did in fact commit
3 this offense and that the offense is incredibly serious,
4 Mr. Rosato, I think, through his history has shown that he can
5 be rehabilitated, that he is amenable to it. And I would say
6 his conduct while he's been incarcerated is really a testament
7 to that fact.

8 Your Honor has seen plenty of defendants appear before
9 you who simply have said I haven't participated in programming
10 at the facility because there has been no programming, and
11 that's been correct. However, Mr. Rosato, on his own volition,
12 has sought out rehabilitative programming outside of MDC that
13 he's been able to do with Emma Familli, a social work intern at
14 our office, who is actually here today. Mr. Rosato has
15 completed a host of programs related to his sex offender
16 conduct, personal responsibility, healthy relationships. He's
17 received a GED tutor certificate. He completed a Gospel of
18 John bible study course, and the vast -- I think maybe with the
19 exception of the GED tutor certificate and perhaps the healthy
20 relationship certificate everything else has been on his own.
21 He's worked on a weekly basis with Ms. Familli, and he sought
22 that out. He did that on his own.

23 I think it really goes to show you his interest and
24 his investment in his future and his self. This is a person
25 who wanted to become an attorney, and he took all the steps to

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1 do that. You know, he started off with an internship program
2 where -- once he was released from state custody in 2013, he
3 started off with an internship program, working with Gary
4 Villanueva, and he did such an amazing job that Mr. Villanueva
5 hired him full-time after the internship ended.

6 He then continued on to other areas of work, the most
7 recent being immigration work for the Law Office of Adam
8 Kopochian. And as you can see from the letters of
9 Mr. Kopochian and Mr. Villanueva, as well as all of his
10 colleagues at these offices where he's previously worked, I
11 mean, he's really done incredible for himself during that time
12 that he was out. As your Honor even believed, the motions that
13 he had filed that we later withdrew, your Honor believed that
14 to be written by an attorney.

15 He's an incredibly smart, bright man and, you know,
16 it's been painful, I think, this process, not just only for,
17 you know, all those involved, including his family, which, by
18 the way, is here. His father is here, as well as his aunt.
19 But I think it's really been a painful prospect for him just in
20 terms of what's been lost for himself and his future.

21 You know, he did have all intent to move forward with
22 proceeding to law school. He was studying for his LSATs. He
23 went and he was doing CLE programming, you know, and he worked
24 not just -- not just pre-pandemic, but even during the
25 pandemic. You know, I think it was a real toll on him that he

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1 wasn't able to be in the office, wasn't able to be around his
2 work colleagues, or his clients, and he would try and return as
3 much as he possibly could.

4 But I think it really just speaks to who he is, the
5 future he wanted for himself, and how that has been lost. And
6 this is certainly a cautionary tale for anyone who might
7 struggle with these same issues that Mr. Rosato struggles with.
8 It is certainly incredibly deterrent for him to engage in
9 future conduct and, quite frankly, the likelihood that he even
10 will or will be able to is pretty low given the fact of his age
11 upon release and the likelihood of civil confinement
12 thereafter.

13 So, again, given this history, I won't go through his
14 history of abuse. It was noted pretty thoroughly in our
15 submission. But I do want to note that, despite all of the
16 odds against him initially, he really had done remarkable
17 things for himself in those seven years that he was out prior
18 to the conduct in this case. And for those reasons, we do
19 believe a sentence of 15 years, a decade and a half, is
20 sufficiently harsh here to punish Mr. Rosato, and we would ask
21 for a supervised release term of five years thereafter.

22 Thank you, your Honor.

23 THE COURT: Thank you.

24 And let me hear from the government.

25 MR. BODANSKY: We obviously set forth the core

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1 arguments we have in our written submission, so I won't rehash
2 them here, but I do want to address a few points raised by
3 defense in their written submissions and today that I think
4 speak to why the government believes a sentence greater than
5 the 15-year mandatory minimum is warranted in this case.

6 I think, first, it is important to note that really
7 throughout all of their submissions the defense has failed to
8 truly acknowledge the nature of the offenses here and has tried
9 to portray this really as a case that it is not.

10 For example, on page 6 of its brief, the defense
11 states that in October 2020, seven months into the pandemic,
12 Mr. Rosato began communicating with persons that identified
13 themselves as females under the age of 18 and asked them to
14 send him photos, some of which were sexual in nature. That's
15 all true, but that falls far short of actually capturing the
16 offense conduct in this case. For one thing, the persons he
17 was communicating with did not just identify themselves as
18 under 18 years old. Some identified themselves as as young as
19 13 years old.

20 But more importantly, he didn't just ask these
21 purported minors to send him photos. Really, a better way to
22 characterize what he tried to do was convince them to become
23 his live-in sex slaves. For months, across multiple
24 conversations, he tried to convince seemingly troubled teens
25 elsewhere in the country to move to New York to live with him

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1 so long as they agreed to live by his terms, which involved him
2 being able to have unprotected sex with them as desired as
3 often as he wished, him being allowed to impregnate them, and
4 then ultimately his intention to have sex with their children
5 once they were old enough, which he stated was 12 to 13 years
6 old. That's a far cry from the way his conduct is described in
7 the defense submission, and the defense just fails to fully
8 address the gravity of the offenses here.

9 The defense's account of the timing of these offenses
10 is also misleading in a critical way. As I just noted, really,
11 the account that the defense gives here is that the conduct
12 began in earnest in October of 2020 largely as the result of
13 the very difficult circumstances the defendant was under during
14 the pandemic, and as the months of the pandemic wore on, he
15 finally, in their words, relapsed and reengaged in this conduct
16 in October 2020. But in fact and as the government has shared
17 in discovery and in pretrial notices, this case was a referral
18 from another F.B.I. office which -- from back in March 2020.

19 So in fact, another F.B.I. office had an undercover
20 conversation with the defendant in March 2020, not October
21 2020, and that conversation progressed much like the
22 conversations here. The undercover identified herself to be 13
23 years old, and the defendant proceeded to try to convince that
24 individual to move to New York to live with him and to have sex
25 with him and he expressed his intention to impregnate that

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1 person. Again, that was March 2020, mere weeks into the
2 pandemic, not months into the pandemic. Nowhere in the
3 submissions does the defense address that fact, and I think
4 that really undercuts the narrative here about what drove the
5 defendant in October to commit the other instant offenses.

6 Fundamentally, I think the defense tries to
7 characterize this as a case of a troubled individual who, after
8 enduring those months of the pandemic, turned to child
9 pornography online, but that just doesn't capture the offense
10 here. In fact, the defendant's intentions were far more
11 dangerous. He attempted over many weeks and across many
12 conversations to engage in really horrific hands-on offenses
13 with multiple children. Again, he began that conduct much
14 earlier than October 2020.

15 It is also important to note there is no suggestion
16 here that any of this was fantasy or that he did not intend to
17 follow through with any of this. There is no claim of that
18 anywhere in the defense's submissions or the defendant's
19 letter. And indeed, the evidence would not support that. When
20 the defendant finally found a seemingly willing participant in
21 the undercover F.B.I. agent involved in this case, he showed
22 every indication of following through with that and was caught
23 at the final moments and arrested by the F.B.I.

24 Similarly, defendant sort of misleadingly or
25 incompletely characterizes some of his prior offense conduct.

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1 So, for example, with respect to his first conviction in 2004,
2 the defense states, on page 3 of its brief, that "after losing
3 his mother, the defendant turned to pornography and then at
4 some point found child pornography." Again, that's true; but,
5 again, also not the full story.

6 The PSR makes clear that, with respect to that
7 offense, the defendant not only possessed child pornography,
8 but also stalked and attempted to kidnap a 13-year-old girl.
9 And it was during the pendency of that case that he engaged in
10 the conduct that led to his second conviction which involved,
11 when he was 24 years old, having sexual intercourse with a
12 14-year-old 24 times.

13 I think the fact that the defense and the defendant
14 never really fully addressed the gravity of all of these
15 offenses illustrates the defendant really has not yet come to
16 terms with the gravity of what he has done and has not yet
17 fully expressed adequate remorse for them. And there is one
18 other thing left out of his submissions that's noted in the PSR
19 and in the government's papers. Not only did the defendant
20 engage in all of the conduct just discussed, but a review of
21 the defendant's electronic devices also revealed that around
22 the same time in late 2020 the defendant was engaged in an
23 actual sexual relationship with a 16-year-old. Nowhere
24 anywhere in the defense's submissions does the defendant
25 address that conduct, that very serious conduct, as well.

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1 So, again, I think the failure of the defendant to
2 address these things shows a lacking of remorse. And indeed
3 when reviewing the defendant's letter, he expresses remorse in
4 a number of respects and he apologized to a number of parties,
5 but nowhere does he apologize to the actual minors with whom he
6 communicated and nowhere does he fully acknowledge the horrific
7 consequences that could have occurred had the F.B.I. not
8 intervened in this case.

9 So I think the government's view is that all of this
10 underscores why a sentence greater than 15 years, the mandatory
11 minimum, is necessary here and warranted here. Obviously, he
12 is subject to the 15-year mandatory minimum as a result of
13 having pled guilty to Count Three, but that's the bare minimum
14 sentence for any defendant convicted of the offense charged in
15 Count Three which involves attempted possession of child
16 pornography. But for all the reasons discussed, the
17 defendant's conduct is far worse than the bare minimum
18 necessary to meet the elements of that offense.

19 For one thing, he has not one but two prior sex
20 offenses involving children. And equally important, again, he
21 did not merely attempt to receive child pornography, he went
22 far beyond that in terms of what he was attempting to
23 accomplish.

24 And I think actually some of the cases that are cited
25 by the defendant in their submission further support the

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1 government's position that a sentence greater than 15 years is
2 warranted here. The defense goes through a number of different
3 cases, but it's noteworthy, at least the defense gives no
4 indication that any of those cases involve a recidivist sex
5 offender like the defendant, let alone a twice recidivist sex
6 offender like the defendant; and yet, nevertheless, many of
7 those defendants—I think approximately half—did receive
8 sentences greater than 15 years.

9 And the one case that the defense cites from this
10 Court *United States v. Khan*, I think, points in the same
11 direction. The defense suggests that the mandatory minimum
12 there was 15 years. The government's understanding is that
13 the mandatory minimum in that case was in fact ten years. But
14 notwithstanding the ten-year mandatory minimum, the Court
15 sentenced that defendant to 17 years, substantially above the
16 mandatory minimum.

17 And in some ways my understanding is that the conduct
18 there was worse than here. I think the offense progressed much
19 further there, and a real victim was harmed in a very real way
20 in that case. But what the defendant attempted to do here was
21 no less significant and in some ways even worse and, more
22 importantly, the defendant in *Khan* had no prior sex offense
23 convictions. Here, the defendant has two. The defendant in
24 that case was also 21 at the time that the offenses began.
25 The defendant here was in his forties. So for all those

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1 reasons, the fact that that defendant received a 17-year
2 sentence on a ten-year mandatory minimum I think only further
3 reinforces the government's position here as with respect to
4 this defendant.

5 The government's view, at bottom, is that this
6 defendant is extraordinarily dangerous and poses an
7 extraordinary risk of reoffending again. For an extended
8 period of time, he attempted to engage in hands-on offenses
9 with children. He did all of this after being convicted twice
10 before of sex offenses involving children. And for those prior
11 offenses he was sentenced to an eight-year term -- he was
12 incarcerated for approximately eight years. That eight-year
13 period of incarceration appeared to do very little to prevent
14 him from reoffending again. Again, I know the defense suggests
15 that it did successfully prevent him from reoffending
16 temporarily, until he encountered the pandemic. I think we
17 have already noted how that narrative does not fully square
18 with the evidence here.

19 But nevertheless, the pandemic was extraordinary, of
20 course, but hardship is not, and there is nothing to say that
21 the defendant will not encounter hardship again in his life.
22 And he's given the Court no reason, no assurance that if he
23 were to encounter hardship again, after being released, he
24 would not again return to this conduct, as he's done three
25 times already.

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1 The government also takes little comfort in the
2 rehabilitative efforts that the defense has cited. The
3 programming that he's participated in, the government is
4 pleased to see it, of course, but the defendant has
5 participated in programming like that in the past. He did a
6 two-year intensive sex offender treatment program during his
7 prior term of incarceration and intensive outpatient counseling
8 from 2013 to 2018. Again, we commend the defendant for doing
9 that programming, but that did not suffice to prevent him from
10 reoffending.

11 So for all of these reasons and those cited in our
12 brief, the government respectfully submits that a sentence
13 significantly greater than the 15-year mandatory minimum is
14 warranted here.

15 THE COURT: All right. Let me hear from the defendant
16 if he wishes to be heard.

17 THE DEFENDANT: One moment, your Honor.

18 (Defense counsel and defendant confer)

19 MS. CABRERA: Mr. Rosato chooses to rest on his letter
20 to the Court.

21 THE COURT: All right. So as often in sentences, my
22 heart goes out to the friends and family of the defendant who,
23 in some ways, are themselves victims of the defendant's
24 misconduct because they recognize how much potential Mr. Rosato
25 had and how impulses, that undoubtedly strong, undoubtedly

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1 difficult to resist, but nevertheless had to be resisted for
2 the protection of children, were in the end not only the source
3 of his misconduct but the source of his ruination of his
4 otherwise promising life. So there is nothing but sad
5 consequences in this situation.

6 The government I think rightly points out that we have
7 here both a recidivist and also someone whose intentions went
8 well beyond what I see in more conventional cases of accessing
9 child porn or things like that. This was a far more dangerous,
10 far more vicious situation, and it is unfortunate that the
11 state of modern psychology, psychiatry, and neuroscience is
12 such that it cannot permanently cure people with these
13 impulses. But what we have here is a defendant who went beyond
14 every social protection of children imaginable. So I agree
15 with the government that a sentence even beyond 15 years -- and
16 I don't mean to minimize the point made by defense counsel that
17 15 years is itself a severe penalty, but I think more is called
18 for here.

19 At the same time, no fellow human being is beyond
20 redemption. On any analysis, when the defendant gets released
21 from prison, he will be of an age when it is less likely that
22 he will engage in these kinds of activities just because, if
23 nothing else, hormonal changes in the body. And it cannot be
24 denied that he would still have the potential at that point to
25 lead a positive life with all of those promises and all of

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1 those capabilities that he has shown in the positive side of
2 his life.

3 So weighing all of those factors together, as well as
4 all of the other factors under Section 3553(a) of Title 18, I
5 think the right sentence is 20 years.

6 So the sentence of the Court is that the defendant is
7 it sentenced to 240 months, concurrently on both counts. I
8 think lifetime supervised release is called for here because I
9 don't think we can take for granted that he will, even with all
10 the efforts being made, overcome impulses that are obviously
11 very deep-seated. So lifetime supervised release will be
12 imposed to follow the period of incarceration.

13 No fine will be imposed because the Court makes a
14 finding this defendant is not in a position to pay any
15 meaningful fine now or in the reasonable future. There is,
16 however, a mandatory special assessment of \$200 that must be
17 paid.

18 In terms of supervised release, the terms of
19 supervised release are, first, the mandatory conditions that
20 the defendant not commit another federal, state, or local
21 crime; that he not unlawfully possess a controlled substance;
22 that he cooperate in the collection of DNA; that he comply with
23 the requirements of the Sexual Offender Registration and
24 Notification Act. But the remaining condition, the drug
25 testing condition, is suspended based upon the Court's

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1 determination that he poses a low risk of future substance
2 abuse.

3 There will also be imposed the standard conditions of
4 supervision 1 through 12. They appear on the face of the
5 judgment and will also be gone over with the defendant when he
6 reports to begin his period of supervised release, which he
7 must do within 72 hours of his release from custody.

8 And finally, there are the special conditions:

9 First, that he is restricted from viewing, accessing,
10 possessing and/or downloading any sexually explicit material
11 involving minors;

12 Second, that he will submit his person and any
13 property, residence, vehicle, papers, computer, and other
14 electronic commitment equipment, data storage devices, cloud
15 storage or media and effects to a search if needed by the
16 probation office;

17 Third, that he will not have any deliberate contact
18 with any child under 18 years of age unless approved by the
19 probation office;

20 Fourth, that he will permit the U.S. Probation Office
21 to install any application or software that allows it to survey
22 and/or monitor his computer and similar activity;

23 Fifth, that he will not access any websites, chat
24 rooms, instant messaging or social networking sites that would
25 violate the terms of service of that site;

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1 Six, that he will undergo a sex offense specific
2 evaluation and participate in an outpatient sex offender
3 treatment and/or outpatient mental health treatment program on
4 the standard terms and conditions; and

5 Finally, that he will be supervised by the district of
6 his residence.

7 Now, before I advise the defendant of his right of
8 appeal, is there anything else that either counsel needs to
9 raise with the Court?

10 Anything from the government?

11 MR. BODANSKY: A couple of quick items, your Honor.
12 Apologies if I missed it earlier in the proceeding, but if the
13 Court could confirm that defense and counsel -- ask the
14 defendant and defense counsel if they have each had an
15 opportunity to read and discuss the PSR and comment on any
16 factual inaccuracies in the PSR, that would be appreciated.

17 THE COURT: So let me ask defense counsel, I think
18 it's clear from your submission that you went over the PSR with
19 your client, you had one objection which was not accepted by
20 the probation office, but am I correct that, with that one
21 exception apart, you and your client have reviewed and had no
22 problem with the PSR.

23 MS. CABRERA: May I have one moment, please?

24 THE COURT: Yes.

25 (Defense counsel and defendant confer)

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1 MS. CABRERA: Yes, that's correct.

2 THE COURT: Very good. Government have something
3 else?

4 MR. BODANSKY: Only one other matter, your Honor. In
5 the plea agreement, there is an agreement as to forfeiture of
6 two electronic devices. The government would ask the Court
7 include that.

8 THE COURT: Did you submit an order?

9 MR. BODANSKY: We have not submitted an order of
10 forfeiture, your Honor, but --

11 THE COURT: Why not?

12 MR. BODANSKY: We neglected to do so. We can do that
13 promptly after this proceeding.

14 THE COURT: All right. Any objection to that?

15 MS. CABRERA: May I have one moment?

16 (Defense counsel and defendant confer)

17 MS. CABRERA: No objection, your Honor.

18 THE COURT: All right. So submit that order by
19 tomorrow.

20 Anything from defense counsel?

21 MS. CABRERA: One other thing to note. We would ask
22 that, in terms of where he is housed, if Mr. Rosato could be
23 sent to a facility --

24 THE COURT: I'm sorry. Again, you need to speak a
25 little louder.

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1 MS. CABRERA: I apologize. With respect to where
2 Mr. Rosato is housed, we would ask for a facility near New York
3 City or Augusta, Georgia.

4 THE COURT: I'm happy to recommend that. As I'm sure
5 you have already told your client, I cannot order it, but I
6 will certainly recommend it.

7 MS. CABRERA: Thank you, your Honor.

8 THE COURT: So, Mr. Rosato, you have a right to appeal
9 this sentence. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And if you can't afford counsel for the
12 appeal, the Court will provide one for you free of charge. Do
13 you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Very good. Thanks a lot.

16 MR. BODANSKY: Your Honor, the government does also
17 move to dismiss Count Two of the superseding --

18 THE COURT: Oh, yes, thank you for mentioning that.

19 THE DEPUTY CLERK: And there is an underlying?

20 MR. BODANSKY: Yes, Count Two of both the underlying
21 indictment and the superseding indictment.

22 THE COURT: Yes, that is granted. Thanks a lot.

23 oOo